



December 21, 1999

Mr. Jerry W. Hirsch  
Chief of Police  
Mineola Police Department  
P.O. Box 179  
300 Greenville Hwy.  
Mineola, Texas 75773

OR99-3686

Dear Mr. Hirsch:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132012.

The Mineola Police Department received a request for information relating to a police investigation.

You seek to withhold information responsive to the request under section 552.103 of the Government Code.

Section 552.103(a) excepts from required public disclosure information

relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party[.]

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991). In support of your section 552.103 claim, you advise that the requestor is considering civil litigation against one of the individuals involved in the investigated incident. You have not established that the information at issue relates to litigation to which the police department, or its officers or employees, is or will be a party. Therefore, section 552.103 does not apply to the requested information. Accordingly, none of the information may be withheld under that provision.

We note, however that some of the information you submitted as responsive to the request consists of medical records. Section 552.101 of the Government Code requires withholding,

inter alia, information made confidential by statute. The Texas Medical Practice Act (the “MPA”), Title 3, Subtitle B of the Occupations Code, provides in section 159.002(b):

A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided in this chapter.

We have marked the documents that are medical records subject to the MPA. These documents may be released only in accordance with the MPA. Open Records Decision No. 598 (1991). *See* Occ. Code § § 159.002(c), 159.004, 159.005.

Finally, some of the submitted information is subject to section 552.130 of the Government Code, which provides in relevant part as follows:

(a) Information is excepted from [required public disclosure] if the information relates to:

(1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

The records at issue contain driver’s license numbers that are made confidential under section 552.130. We have marked the information you must withhold under that section. Except as noted above, you must release the requested information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



William Walker  
Assistant Attorney General  
Open Records Division

WMW/ljp

Ref: ID# 132012

Encl. Submitted documents

cc: Mr. J. O. (Dick) Robinson  
Rt. 2, Box 2245  
Quitman, Texas 75783  
(w/o enclosures)